UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1304
14 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1304th MEETING

Held at Headquarters, New York,
on Tuesday, 29 March 1994, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mexico (continued) (CCPR/C/76/Add.2)

1. At the invitation of the Chairman, Mr. González Felix (Mexico) took a place at the Committee table.

2. The CHAIRMAN invited the Committee to resume its questioning of the Mexican delegation in connection with section II of the list of issues.

3. Mr. PRADO VALLEJO requested the reporting State to clarify whether the amnesty decreed by the President of the Republic in connection with the events in Chiapas applied only to those who had participated in the armed uprising, or also to members of the security forces who might have committed human rights violations.

4. Non-governmental organizations had reported that torture and arbitrary detention by the security forces were continuing, that trials were often delayed and that victims of torture did not receive compensation. The Government should be more specific about the use of torture to obtain confessions, which appeared to be a routine police practice.

5. Paragraph 155 of the report (CCPR/C/76/Add.2), which listed the penalties and security measures provided for in article 24 of the Penal Code, needed clarification. In particular, subparagraph (11) (Suspension or deprivation of rights) called for explanation, in the light of article 4 of the Covenant, which referred to a number of rights that could not be suspended under any circumstances. Similarly, the meaning of subparagraph (13) (Special publication of the sentence) was unclear, as sentences were normally published.

6. Turning to paragraph 175 of the report, which dealt with prison work, he noted that prisoners were required to pay for their keep in the prison by deduction from what they received for the work they performed. He would appreciate information on the guidelines that determined the type of work performed by prisoners and their rates of pay. Details on the solitary confinement cells should also be provided.

7. Noting that the National Human Rights Commission had adopted a resolution stating that only well-documented complaints of torture would be investigated, he said that the implications of that decision were unclear, as it was doubtful whether victims of torture could provide documentation.

8. The Government should respond to the reports received by the Committee that many of the persons arrested in Chiapas had yet to stand trial, as well as information from Amnesty International indicating that some members of indigenous groups who did not speak Spanish had been tried and convicted without the assistance of an interpreter.

(Mr. Prado Vallejo)

9. Lastly, he would appreciate further details on the remedy of amparo and its availability to defendants who claimed that their confessions had been extracted by force.

10. Mr. BRUNI CELLI said that among the positive developments in Mexico in recent years had been the amendment of the Act for the Prevention and Punishment of Torture, which provided penalties of up to two years in prison for persons convicted of torture, and established the right of victims to compensation. However, as pointed out by Mr. Prado Vallejo, the practice of torture had not only persisted, but was actually common in the initial stages of a criminal prosecution. Amnesty International had forwarded to the Committee complaints of prisoners being tortured on the premises of the Ministry of Justice in June 1993, and of forced confessions being obtained by the security forces from members of indigenous groups in San Cristóbal in March 1993.

11. With regard to the death penalty, there appeared to be a strong consensus in favour of its abolition, as reflected in paragraphs 91 and 102 of the report; however, the Mexican representative had stated at an earlier meeting that no conclusion had been reached on the subject during the process of constitutional reform. It would be interesting to learn whether there was significant resistance in certain quarters to abolishing the death penalty.

12. Mrs. EVATT said that at an earlier meeting, the Mexican representative, referring to section II (h) of the list of issues, had mentioned that 14 cases of arbitrary arrest had been investigated and had led to recommendations. However, according to the report of the National Human Rights Commission, 1,000 complaints of arbitrary arrest had been received during the period 1990-1992, resulting in only 51 recommendations; the Government should explain the discrepancy between the two figures. It would also be interesting to learn whether there had been a reduction over time in the number of complaints received by the Commission. Details on the number of disappearances should also be provided.

13. Mr. WENNERGREN said that he would appreciate additional information on the system of administrative remedies and on whether individuals could have access to judicial review if they deemed administrative decisions to be contrary to their interests. It would also be interesting to learn whether such review would be carried out by a district court or by a special administrative tribunal.

14. Mr. EL-SHAFEI requested the Government to clarify the following issues: whether detainees were interrogated in the presence of a lawyer; whether the time and duration of an interrogation and the names of all persons present were recorded, thus permitting subsequent judicial scrutiny; whether the guidelines for interrogation procedures were published and made known to defence lawyers and human rights groups; whether there was any distinction between the authorities responsible for detention and for the interrogation of detainees; whether arrests were carried out under judicial control; whether law-enforcement officials informed persons about to be arrested of the reasons for their arrest; whether all detainees received an oral or a written explanation, in a language which they understood, of their legal rights, including the right to lodge a complaint; the circumstances under which members of the armed forces arrested or

(Mr. El-Shafei)

detained civilians, and whether judicial safeguards existed against unlawful arrest and detention; whether detainees were under judicial supervision; whether medical safeguards were available; whether all reports of torture or ill-treatment were thoroughly and impartially investigated and torturers brought to justice; and, lastly, whether victims of torture were compensated.

15. Mr. AGUILAR associated himself with Mr. Bruni Celli's comments regarding the death penalty.

16. He was concerned at the reports of excessive use of firearms by the police and security forces in Chiapas. While a state of war had undoubtedly existed in that region, the complaints were less suggestive of an effort to restore law and order than of anti-subversive activity in the broader, Central American sense. He would appreciate information on whether such complaints had been investigated and whether any member of the armed forces had been tried for human rights violations.

17. The problem of firearms in the hands of civilians was also a source of concern, as shown by the recent assassination of the presidential candidate, Luis Donaldo Colosio. The right to bear arms was embodied in article 10 of the Constitution; it would be interesting to learn whether any amendment to that article was contemplated.

18. With regard to article 6 of the Covenant, the Committee had been informed that investigations had been carried out into the disappearance and subsequent death of persons arrested by the security forces, but that such incidents were continuing. The reporting State should indicate whether an education programme existed to train members of the armed forces in the observance of human rights. A further problem related to the activities of informers who collaborated with the police and who were accused of being responsible for disappearances, torture and extrajudicial executions; details should be provided on any steps taken to prevent such persons from acting under police authority and to investigate any deaths or disappearances attributable to them.

19. In connection with article 7 of the Covenant, it appeared that, despite the existence of the Act for the Prevention of Torture, there was a general atmosphere of tolerance of torture. It was also alleged that certain groups of people, such as those critical of the Government, human rights activists, trade-union leaders, leaders of indigenous groups and persons accused of drug trafficking, were routinely subjected to torture; further data should be provided.

20. Drawing attention to paragraph 229 of the report, which detailed a number of measures adopted in respect of migration, he requested the Government to comment on the allegations that persons attempting to cross the border between Mexico and the United States illegally were commonly subjected by the Mexican authorities to ill-treatment, including torture, and that no victims had ever been compensated.

21. Paragraphs 179 and 180 of the report, which indicated that, with the exception of Mennonites, no Mexicans had claimed the status of conscientious

(Mr. Aguilar)

objector to compulsory military service - an assertion which hardly seemed credible - should be clarified in the light of article 8 of the Covenant.

22. Lastly, he would appreciate additional information on the Legal Services Programme, especially the lawyers' offices referred to in paragraph 277 of the report. In connection with article 14 of the Covenant, it would also be useful to learn whether public defenders were available and what steps were taken to ensure a proper defence for non-indigent persons who had not retained counsel.

23. Mrs. HIGGINS said that the whereabouts of most of the people arrested during the Chiapas uprising were still unknown. Some were being held at Chiapas state prison, and had received visits from representatives of Amnesty International; the Government should indicate where the others were being held, whether at army bases or elsewhere.

24. She would appreciate information on whether measures were in place to ensure that members of the security forces who were dismissed after having been found guilty of abuses could not be rehired subsequently for similar posts.

25. With regard to a fair trial and pre-trial detention, she had the impression that arrests without warrants were common; she would welcome information on any efforts to control that practice, and on whether there were time-limits for informing people of the charges against them and bringing them before judges.

26. She questioned the effectiveness of the remedy of amparo, as the Committee had been informed that judges sometimes ruled favourably on amparo applications and ordered the unconditional release of detainees, but that the persons concerned were neither released nor brought to trial.

27. Mr. DIMITRIJEVIĆ said that he was surprised by the somewhat unconvincing references in paragraphs 179 and 180 of the report (CCPR/C/76/Add.2) to conscientious objectors. The fact, for example, that Mennonites were not required to serve seemed to contradict the statement that there was no legislation governing the matter, since that clearly constituted an exception. Regarding instances of torture, where victims risked reprisals if they were identified, he asked what happened at trials of those accused of torture and what objections there were to evidence obtained under duress. For torture to end, in addition to investigating individual instances it must be made clear, in a systematic manner, that such practices were unacceptable.

28. Mr. SADI noted that Amnesty International, a highly respected organization, had recently sent a delegation to Mexico and had reported on instances of deaths, disappearances and torture. He asked what had happened to the Amnesty International report and to its recommendations. The National Human Rights Commission appeared to lack authority to act effectively, a point raised by a number of human rights organizations. Accordingly, he wished to know whether there was any intention of extending its authority.

29. Mr. GONZÁLEZ FELIX (Mexico), responding to questions, said that the amnesty in Chiapas was intended to induce the rebels to lay down their weapons as a step towards negotiations. The amnesty did not form part of the human rights investigations, and was without prejudice to the conduct and findings of the investigations.

30. Allegations of torture had quickly come to the attention of the National Human Rights Commission following its establishment in 1990, and a new Federal Act for the Prevention and Punishment of Torture had recently been adopted. The Act had introduced important changes: confession was no longer a sufficient basis for the commencement of criminal proceedings; interrogations, which were now recorded, must take place in the presence of a lawyer or other reliable witness; the burden of proof had been reversed, so that any captor must disprove an allegation of torture; the severity of penalties had been increased and their application broadened; and victims could seek compensation. The Act had had a marked impact: in the first half of 1991, allegations of torture had constituted the largest class of complaints to the Commission, but by 1993 they had fallen to tenth place. Regulations had been promulgated pursuant to the Act and were already being applied. One problem that the Act had resolved was that previously such cases had had to be pursued on some other ground since there had been no specific category relating to allegations of torture. It was also now possible to pursue a claim for civil damages in parallel to a criminal action. Once the Commission had issued a recommendation in such a case, judges were bound to take it into consideration. The Government was continuing the development of a judicial mechanism to ensure the follow-up of criminal actions in cases of torture. The whole subject was currently the foremost concern of the Commission and was being worked on intensively. A number of changes had already been made in the legislation and procedures relating to the subject, and further improvements would be made.

31. With respect to the responsibility of prosecutors where there were allegations of torture during investigations, the law provided that, as the officials in charge of investigations, they bore responsibility for the investigations and would thus be held responsible should there be instances of torture. Prosecutors had been suspended in such instances.

32. The incidence of arbitrary arrest was less than might appear, in that such complaints were often made in many instances where individuals were caught in flagrante delicto, where there was no opportunity to issue a warrant. Recent examples included the assassinations of political figures. The number of cases in which allegations of arbitrary arrest had been upheld by the National Human Rights Commission was relatively small, amounting, for example, to just 29 for 1993 and the first part of 1994. Where allegations were upheld, those who had broken the law were punished, and the judicial authorities were kept fully apprised of the fact that arbitrary arrest had occurred.

33. Certain offences could result in a loss of political rights, for example, the right to hold public office. The suspension of such rights, essentially involving positions of trust, in those circumstances, did not contravene the provisions of the Covenant. Sentences in cases of defamation were made public and published in the press.

(Mr. González Felix, Mexico)

34. The payment of prisoners related to situations where prisoners had elected to do work to cover expenses in excess of their basic maintenance expenses, which were borne by the State. The scheme was voluntary, and did not constitute forced labour.

35. Solitary confinement took place in cells with special safety and security measures, such as padded walls and television cameras, to allow for close monitoring of prisoners who were liable to be dangerous to themselves or to others. Such cells were used, for example, for the detention of drug traffickers, who were generally extremely dangerous prisoners.

36. Interpretation services were available for members of indigenous groups during criminal proceedings, and the National Human Rights Commission had taken steps to have its regulations made available in a number of indigenous languages.

37. The recourse of amparo was intended for emergency situations to enforce constitutional rights, and, while it could operate like habeas corpus and result in release, it was not generally an effective remedy in the case of completed acts. Amparo could be applied both directly and indirectly. A direct application might involve, for example, judicial review of a judgement of a court of first instance or an arbitral decision where there had been an irregularity in the proceedings. An indirect application might arise where an individual's rights were threatened, and application was made to a district judge against the violating authority. Under the Mexican judicial system, amparo offered the best means of protecting a civil right. Since it could not be used to remedy completed acts, there was a need for a non-adjudicatory body such as the National Human Rights Commission.

38. Regarding alleged human rights violations in Chiapas, the Commission had found that violations had indeed occurred, and that the security forces had broken into homes, removed various tools, and physically ill-treated a number of individuals. Appropriate proceedings were being conducted against the officials responsible, including the coordinator of the security forces. The Commission had found that the goods seized should be returned, and compensation awarded. The Commission's findings were being sent to the Governor of Chiapas.

39. Turning to arrests in Chiapas, he said that only 32 people remained in detention, at the state prison, and that any human rights organization that had expressed an interest had been able to visit them, including Amnesty International and the International Committee of the Red Cross, which had verified the conditions in which they were held. No one was being detained in a military camp.

40. The question of whether the death penalty should be abolished was being widely debated in Mexico and remained a concern of the Government. However, the assassinations of Cardinal Ocampo and Mr. Colosio, for which the death penalty was being widely demanded, made it difficult for the Government to go forward on the matter for the time being.

(Mr. González Felix, Mexico)

41. Turning to Mrs. Evatt' questions, he said that the figure of 14 cases of arbitrary arrest he had given earlier had been erroneous; there had been 1,000 complaints of such arrest, but the number of actual cases was under 100. Most of the cases of disappearances under investigation were of long standing. Since its previous report, the Government had made a determined effort to clarify the subject, and the number of persons listed by the United Nations as having disappeared had dropped from 258 in 1990 to 210 at present. With the exception of the one significant case of José Ramon Garcia Gomez in 1989, and the 23 cases in Chiapas, which were under investigation, there had been no new cases.

42. Replying to Mr. Wennergren on the question of remedies, he said that the one most frequently invoked was that of amparo, which was commonly used in the federal courts. It was also possible to file a civil complaint and request compensation, but doing so had the effect of transforming cases into civil disputes and making it difficult to determine how they had been resolved. The advantage of a recommendation by the National Human Rights Commission was that it was transmitted directly to magistrates, who could then take it into account in considering the general situation of the individual concerned.

43. Replying to Mr. El-Shafei's questions, he said that a detailed record was kept of interrogations, and guidelines had been issued establishing the procedures for interrogation and the rights of persons being interrogated. There was a separation of powers with respect to investigatory functions, as persons detained by the judicial authorities were investigated by the Public Prosecutor's Office. Medical care was available to persons under detention and a medical certificate had to be prepared certifying that a person under detention had not been subjected to ill-treatment.

44. Turning to Mr. Aguilar's questions, he agreed that the use of firearms was a serious problem. Those weapons were not manufactured in Mexico, and he hoped, therefore, that they would be monitored more strictly at the international level. Although firearms could be owned and kept at home by civilians, a licence was needed for them; the main problem was that of illegally owned firearms. Replying to the question on training, he noted that there were educational programmes for the police and security forces and the judicial authorities, and a training institute for prison workers which offered human rights courses.

45. With respect to the problem of informers, he said that instructions limiting and regulating their use had been issued to the police.

46. The National Human Rights Commission had produced a paper on the subject of the improvement of conditions for migrant workers, and the Government was making efforts to improve their treatment. Military service in Mexico was voluntary, although one hour a week of military training was given to all young people for one year. The question of conscientious objector status had arisen in Mexico only in connection with the Mennonite community, and had been satisfactorily resolved. In Mexico, persons accused in criminal cases were required by law to have legal representation, and a system existed for providing members of indigenous groups, the indigent and the disadvantaged with legal assistance. Efforts were being made to further improve that system.

(Mr. González Felix, Mexico)

47. Replying to the questions put by Mrs. Higgins, he said that there were 32 detainees in Chiapas and that they had been in contact with Amnesty International and the International Committee of the Red Cross. Special investigations were in progress with respect to the allegations of torture and execution under detention in that state, and it was hoped that a final report on the matter would be issued shortly. The matter of unreasonable imprisonment and delays in prosecution was one on which intensive work was being done, and the Commission was most active in that area. Although amparo was an effective remedy in criminal cases, in the cases to which Mrs. Higgins had referred it did not always apply.

48. Replying to Mr. Sadi, he said that Amnesty International's views were frequently solicited and its suggestions had frequently been adopted.

49. The CHAIRMAN said that section III of the list of issues dealt with liberty of movement, expulsion of aliens, and freedom of religion, assembly and association. In paragraph (a), the reporting State was asked to comment on the effect of the recent events in the Chiapas and other regions on the exercise of the rights guaranteed in article 12 of the Covenant. Paragraph (b) sought information on the investigations by the National Human Rights Commission into the murder of media representatives. Paragraph (c) requested clarifications as to the consistency of the restrictions on the employment of foreigners referred to in paragraphs 425 and 426 of the report (CCPR/C/76/Add.2) with the provisions of the Covenant. Paragraph (d) inquired about the measures taken to ensure liberty of movement and freedom to choose one's residence.

50. Mr. GONZÁLEZ FELIX (Mexico), with regard to paragraph (a), said that the Government had not declared a state of emergency in Chiapas or suspended the guarantees of any human rights there. One area had been blocked off by the military briefly, as required by military exigencies and in order to protect civilians, the press and non-governmental organizations from the armed clashes. As to paragraph (b), he said that a new stage of the special programme to protect journalists had been initiated in 1992. The Commission had investigated a number of incidents involving journalists in 1993, with varying results. However, as a result of the initiation of the special programme, the number of attacks on journalists had decreased. He noted that senior police officials were under detention at a maximum-security prison in connection with the murder of the journalist Manuel Buendia.

51. Turning to paragraph (c), he said that article 5 of the Constitution guaranteed to all persons without distinction the freedom to work in any field of their choice. Certain posts, however, could be filled only by Mexicans for reasons of national security, such as those of military officers. Some preference was given to Mexicans in employment, but discrimination did not result because the preferential treatment was not obligatory. Mexico had relaxed its labour and immigration policy to facilitate the entry of foreigners wishing to work in the country. Reforms to the General Population Act and the law governing the exercise of professions in the Federal District had eliminated restrictions, establishing five separate categories of non-resident workers covering all types of employment, including the professions. The North American Free Trade Agreement between Mexico, the United States and Canada had included provisions on non-discrimination in employment.

(Mr. González Felix, Mexico)

52. As to paragraph (d), he said that freedom of movement and choice of residence were guaranteed in article 11 of the Constitution. The exercise of that right could be restricted only by the judicial authorities in accordance with the law.

53. The provisions of the General Population Act were based on considerations of public order and national security, and were general in nature; therefore, they met the requirements for the establishment of restrictions on freedom of movement in article 12 of the Covenant. The Act guaranteed to Mexican nationals the right to enter the country even without nationality documents; their sworn statement that they were Mexican nationals would suffice. One of the objectives of Mexico's immigration policy was to promote the repatriation of Mexican citizens and their reintegration into society. Both foreigners and Mexican nationals could leave the country freely, unless criminal charges were pending against then.

54. Mr. HERNDL drew attention to the National Development Plan (1988-1994) mentioned in paragraph 324 of the report (CCPR/C/76/Add.2), and requested further information on its legal nature - whether it was a law, an ordinance, a legal instrument or simply an instruction. Referring to paragraph 325, he asked what measures had been taken by the Department of Security and Highways to guarantee the rights of demonstrators, and if those measures applied only to the demonstrators or also to the police who monitored them. More details would be welcome on the duties of the police in respect of peaceful demonstrations (para. 331), and the procedures for ensuring public order during mass demonstrations (para. 332). He had heard disturbing reports of a peaceful demonstration of Volkswagen workers where the police had attacked the demonstrators with dogs and clubs, and would like further information on that incident.

55. Government employees had the right to strike, with the exception of those in "positions of trust", which should be more clearly defined. It was also unclear whether that practice conformed to ILO conventions on freedom of association. It would be interesting to know the extent to which the police had the right to form a union and demonstrate in favour of their own interests. He requested an explanation of the fact that only 9.3 per cent of the economically active population was represented by trade unions, as noted in paragraph 362 of the report.

56. Mr. NDIAYE said that he sensed a certain conflict between the church and the State from his reading of paragraph 342, which discussed constitutional provisions that appeared to circumscribe church property, and from his reading of paragraph 421, which stated that ministers of religion could not hold public office. It would be interesting to learn more about the relationship between church and State in Mexico.

57. More information was needed on the Calvo Clause mentioned in paragraph 355. In addition, paragraph 364 stated that Mexican legislation did not recognize any differences between the status and rights of children born in or out of wedlock, but he wondered how that principle was applied in practice.

58. On the subject of political parties, it seemed unnecessarily restrictive to prevent naturalized Mexican citizens from assuming the office of President or parliamentary deputy. The majority party had held power for some 70 years, and he wondered about the likelihood of a true change of government. No doubt, its financial resources were greater than those of the opposition parties, and additional information should be provided on the limits on campaign spending and whether external assistance, from international foundations, for example, could be accepted. He failed to understand why Mexico had refused to allow international observers at its elections, and would welcome further clarification.

59. Mr. AGUILAR, referring to the amendments to the General Population Act mentioned in paragraph 229, asked for more information on the changes in the penalties imposed on traffickers in migrant workers, many of whom came from the countries of Central America. The meaning of the first sentence of paragraph 287 should be clarified, since it had led him to wonder whether a childless married couple was considered a family under Mexican law even though there had been no biological generation from the union. With regard to the right of workers in the banking sector to strike, he requested more information on the restrictions to that right, which appeared contrary to article 26 of the Covenant. He also had been struck by the low percentage of workers who were members of unions, as mentioned in paragraph 362, and would like more details concerning their political affiliation, for example, how many were members of the Partido Revolucionario Institucional, affiliated with other political parties, or independent.

60. Lastly, he shared the misgivings expressed by Mr. Ndiaye concerning the refusal to allow international observers at Mexican elections.

61. Mrs. EVATT said that she would welcome more information on the nature of the irregular conduct by public servants mentioned in paragraph 286, the compensation provided, and whether any irregularities had arisen in relation to the recent police action in the state of Chiapas. From the numerous reports of restrictive rules regarding assembly, public meetings and peaceful demonstrations received from international organizations before the events of January 1994, it appeared that a different type of law operated in that region. She requested an account of how the laws and their implementation differed with regard to Chiapas. Could the National Human Rights Commission assess the laws of that state to verify their compatibility with the Covenant and make recommendations?

62. Mr. POCAR said that he had heard disturbing reports regarding the freedom to demonstrate peacefully and to organize trade unions, including a report concerning the February 1993 arrest of the leader of a trade union in connection with a strike against companies near the United States border with Mexico. Further information on that incident as well on measures taken to guarantee the freedom of trade unions and members would be helpful.

The meeting rose at 1 p.m.